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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

NORBERT A. LAING, an individual, on behalf of himself and all other persons, associations, firms and corporations similarly situated,

Petitioner,

vs.

MINNESOTA VIKINGS FOOTBALL CLUB, INC. John Doe, Richard Roe, et al., A.B.C., Inc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner (hereinafter, "Laing"), an individual sports fan in Minnesota, petitions this Court to issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit entered in this case on February 11, 1974, with Petition for Rehearing En Banc denied, without opinion, by Order entered on April 3, 1974, resulting in summary judgment against Laing on the antitrust "tying" violations he alleged against Respondent (hereinafter, "Vikings") professional football team headquartered in Bloomington, Minnesota and playing in the National Football League.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals, dated February 11, 1974, is reported in 1974 Trade Cases, para. 74,913 and is reprinted in Appendix A hereto. The Appeals Court Denial of Rehearing Petition dated April 3, 1974, is reprinted in Appendix B hereto. The opinion of the District Court is reported in 1973-2 Trade Cases, para. 74,601 and is reprinted in Appendix C hereto.

JURISDICTION

The judgment of the Court of Appeals was entered on February 11, 1974, and the Petition for Rehearing En Banc was denied by Order entered on April 3, 1974 and this Petition filed within 90 days thereafter. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

First, where Laing, the ticket-buying sports fan, established that there were preferential practices and that only a maximum of 2,500 individual game tickets were available for some games in a given season, was it not error for the District Court and the Court of Appeals to hold that no fact question existed regarding the element of coercion on the sports fan and to thereon grant summary judgment against the antitrust claim of "tying" exhibition game tickets to tickets for championship season games?

Second, where Laing argued and produced facts in the record showing the existence of actual competition between

the Vikings and numerous other professional sports teams for the dollars of the sports fans in the Minneapolis-St. Paul, Minnesota, geographic metropolitan area (e.g., Minnesota Twins baseball team and Minnesota North Stars hockey team) was it not error for the Court of Appeals to additionally hold that no fact question existed regarding the element of anti-competitive effects?

Alternatively, was it not error for the Court of Appeals to require such competitive effect in light of the monopolistic interference with the consumer's freedom of choice?

Alternatively, regardless of whether or not competitive sports are determined to exist, could not a restraint on commerce be found by removing from the commercial market place discretionary consumer dollars that must now go to purchase tickets to exhibition games?

Alternatively, was it not error in abuse of discretion for the Court of Appeals to refuse remand for further proceedings as authorized under 28 U.S.C. section 2106, where the District Court expressly did not address itself to the anti-competitive effect issue and neither court addressed the important *fact* of a four ticket per game limit on single game purchases for certain games?

STATUTES INVOLVED

The statutory provisions are Section 1 of the Sherman Act, 15 U.S.C. Sec. 1, Sec. 3, 4; and 16 of the Clayton Act, 15 U.S.C., Sec. 3, 4 and 16. Alternatively, remand is asked under 28 U.S.C., Sec. 2106. These are printed in Appendix D hereto.

STATEMENT OF CASE

This is an Antitrust Class Action. In order to obtain "season tickets" to Vikings games, it is compulsory that a fan buy a package consisting of all exhibition and championship season home games. Laing is a purchaser of season tickets and complains that the "tying" of the sale of exhibition game tickets to the sale of tickets to championship season games violates Section 1 of the Sherman Act (15 U.S.C. 1) and Section 3 of the Clayton Act (15 U.S.C. 14). Treble damages and injunctive relief are sought under Sections 4 and 16 of the Clayton Act (15 U.S.C. 15 and 26).

The Vikings made a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. The Honorable Earl R. Larson of the Federal District Court, District of Minnesota, Fourth Division, granted said motion and in so doing considered only the "coercion" question and found that "as a practical matter" the Vikings made available individual game tickets. He expressly declined to consider the "competitive effect" question. (App. C hereto).

Appeal was taken by Laing to the Eighth Circuit which, without discussion (except for a concurrence by Judge Lay), adopted the view of the District Court on the "coercion" question and further cited the Detroit Lions case of *Grossman Development Co. v. Detroit Lions, Inc.*, 1973-2 Trade Cases, para. 74,790 (E.D. Mich. 11/16/73) on the "competitive effect" issue even though that particular issue was not joined before that District Court by that plaintiff on the facts.

From the birth of the Minnesota Vikings, Laing purchased the so-called "season ticket" package. That is, tickets covering all home games, be they "*exhibition*" or "*championship season*" games. Laing is in business as a manufacturers' sales

representative and first purchased a block of eight season tickets but in 1968, cancelled two of the eight seats by way of protest against the "tying" of exhibition games to championship season games. To date hereof he has continued his purchase of six season tickets.

The Record before the Trial Court showed that the individual game tickets offered for sale outside of the season ticket package went as low as only 2,500 tickets for certain games.

It is also important to note that the Record (Arneson Deposition 10/9/72, Exhibit 4) showed that a further *four ticket per game* limitation on individual game sales was imposed by the Vikings for certain games. That contrasted with Laing's eight and then six season tickets per game purchases.

With regard to the anti-competitive effect question of *relevant market*, the Record abounds with facts and argument by Laing that the relevant market is comprised of at least the many professional sports in the Minneapolis-St. Paul Metropolitan geographic area and if not so limited then at most as broadly as the "entertainment Market in Minnesota" (a characterization quoted directly from the Vikings brief, at page 4, opposing class action in the Buffalo case of *Coniglio vs. Highwood Services, Inc.*, 1973 Trade Cases, para. 74,314 (W.D. N.Y. 9/18/72). Laing argued and does further herein that the relevant market is a fact question to be determined by the test of reasonable interchangeability or cross-elasticity of demand. That test is certainly satisfied by the Record herein on the various professional sports in Minnesota (two years ago can be added a World Hockey Association team and now a World Tennis Team) competing for the dollar of the sports fan in general and Laing in particular.

The Record (Fink's Deposition p. 51, lines 1-10) showed that the Vikings and Twins (baseball) were stadium co-

tenants at the *same* time of the playing of Vikings exhibition games. The Record (Arneson Deposition, 10/9/72, pp. 9, 51-57) showed that the Vikings had to wait until the end of the Twin's baseball season before certain stadium seats became available for football. Laing showed that the North Stars (hockey) play in a building with a parking lot common to the Vikings' stadium. Both the Twins and North Stars were shown to play at the same time of year as the Vikings games. Laing's affidavit showed he also purchased season tickets to the North Stars, who do not "tie" exhibition games. Further, Laing showed that the Vikings by their prepayment policy withdrew sports dollars from the market in the Winter and Spring playing seasons of other sports. Laing had expressly made this aspect part of his verbal protestations to the Vikings beginning in 1968.

The recent pithy comment of a St. Paul, Minnesota sports writer on low World Hockey Association professional hockey crowds is appropriate here:

> "Like I've said before, in the *fall* in the Twin Cities, they split that entertainment buck like a carnival." (Emphasis added.)

Don Riley, St. Paul Pioneer Press 19. Monday, November 12, 1973.

Laing relied on the language of the Eighth Circuit in *Kansas City Star Company vs. United States*, 240 F. 2d 643, 658 (8th Cir. 1957), that as to the forced combination rate therein requiring the purchase of thirteen papers a week, the jurors could conclude that the average subscriber would not be likely to buy competing newspapers. The sports fan is in a similar position as regards his sports dollar.

REASONS FOR GRANTING THE WRIT

I

CONFLICT BETWEEN A RECENT DECISION OF THE SECOND CIRCUIT AND THE DECISION OF THE EIGHTH CIRCUIT HEREIN

There can be no doubt that had Laing been before the Second Circuit he would have prevailed in light of that Court's position as recently expressed in *Coniglio vs. Highwood Services, Inc.*, 1974 Trade Cases para. 75,016 (2nd Cir. 4/17/74). The opinion by Chief Judge Kaufman in that case favorably cites Judge Lay's concurring language herein leaving the coercion question to a fact determination, 1974 Trade Cases para. 75,016, at 96,489.

Further, the Second Circuit opinion first cites without comment the Eighth Circuit herein and then almost laments the overly broad position taken by that plaintiff on the question of relevant market and concludes it could cover everything ". . . from a trip to the zoo to a night at the opera." That Court concluded that the "extraordinary breadth" of the relevant market position taken by that plaintiff was beyond that ever contemplated for relevant market. 1974 Trade Cases para. 75,016 at 96,491.

Diametrically opposite to the Buffalo plaintiff, Laing argued and as shown in the Record, the existence of direct competition between the professional sports teams of at least the Minnesota Vikings and the Minnesota Twins (baseball) and the Minnesota North Stars (hockey) and certainly his "breadth" of market would have easily satisfied the Second circuit that a fact question existed.

The Eighth Circuit did not even express an opinion on this question other than to simply cite the Detroit Lions case,

supra, wherein as pointed out by Laing the issue was not joined on the facts before the District Court and instead the plaintiff pressed the interference with the consumers free choice.

The Vikings were dismissed out in Buffalo because of facts peculiar to their locality. *Coniglio vs. Highwood Services, Inc.*, 1973-1 Trade Cases, para. 74,314, at 93, 460 (W.D.N.Y. 9/18/72). For Laing to be denied a determination based on the particular facts he has developed and argued is justice denied to the sports fans of Minnesota.

II

SIMILAR CASES ARE PENDING ACROSS THE COUNTRY

A. DETROIT LIONS

Grossman Development Co. vs. Detroit Lions, Inc., supra is on appeal to the Sixth Circuit and is presently being briefed.

B. DALLAS COWBOYS

Richard E. Driskill vs. Dallas Cowboys Football Club, 1973 Trade Cases para. 74,544 (D. Tex. 1973), where the District simply fell in line, is now on appeal to the Fifth Circuit and has recently been argued.

C. NEW ORLEANS SAINTS

William E. Skye vs. New Orleans Saints, Inc., E.D. La. Civ. No. 722331, is reported to be held in submission by the District Court waiting the Dallas appeal although a class has been determined.

D. BUFFALO BILLS

Coniglio vs. Highwood Services, Inc., supra. It is anticipated that a Petition for a writ of certiorari will be forthcoming.

E. SAN FRANCISCO FORTY-NINERS

Lawrence Flood vs. San Francisco Forty-Niners, N.D. Calif. No. C-72-1704-WTS., has had a summary judgment motion by defendant under submission for many months now.

F. NEW ENGLAND PATRIOTS

Pfeiffer vs. Patriots, 1973 Trade Cases para. 74,267 (D. Mass. 7/25/72). The appeal of summary judgment for defendant was voluntarily withdrawn by the plaintiff. However, the team changed its ticket policy by agreement with the office of the Attorney General of Massachusetts, (App. F hereto). On Tuesday, April 23, 1974, the San Francisco Examiner at page 49, published a V.P.I. story that the Massachusetts' House had given initial passage to a bill to further liberalize the sale of Patriot tickets by prohibiting *any* linking of exhibition games tickets to regular season games via seat preference for those taking the full package. It is important to note also that the bill was reported to affect other Massachusetts-based professional sports teams. This latter aspect of course ties right in with this Petitioner's relevant market argument of other professional sports teams being part of the relevant market.

G. MIAMI DOLPHINS

Ellis S. Rubin vs. Miami Dolphins, 74-129-Civ.-C.A. (S.D. Fla.). The defendant filed a motion in April, 1974, for summary judgment.

III

CONFLICT BETWEEN THE DECISION BY THE EIGHTH CIRCUIT HEREIN AND THE OPINIONS OF THIS COURT

A. Summary Judgment Criteria

On point here is the reversal of a defendant's summary judgment by this Court in the leading tying case of *Fortner Enterprises vs. U.S. Steel Corp.*, 394 U.S. 495, 499-500 (1969). The opinion by Justice Black held:

> "A preliminary error that should not pass unnoticed is the District Court's assumption that the two prerequisites mentioned in *Northern Pacific* are standards that petitioner must meet in order to prevail on the merits. On the contrary, these standards are necessary only to bring into play the doctrine of *per se* illegality. Where the standards were found satisfied in *Northern Pacific* and in *International Salt Co., vs. United States*, 332 U.S. 392, 92 L. Ed. 20, 68 S. Ct. 12 (1947), this Court approved summary judgment *against* the defendants but by no means implied that inability to satisfy these standards would be fatal to a plaintiff's case. A plaintiff can still prevail on the merits whenever *he can prove, on the basis of a more thorough examination of the purposes and effects of the practices involved, that the general standard of the Sherman Act have been violated.* Accordingly, even if we could agree with the District Court that the *Northern Pacific* standards were not satisfied here, the summary judgment against petitioner *still could not be entered without further examination of petitioner's general allegations that respondents conspired together*

> *for the purpose of restaining competition and acquiring a monopoly in the market for prefrabricated houses.*" (emphasis added.)

This Court immediately continued, stating, "*And such an examination could rarely justify summary judgment with respect to a claim of this kind . . .*" (citing Poller) (emphasis added). Laing has alleged a conspiracy involving other N.F.L. teams and the League's governing body.

The Eighth Circuit did not address itself to the question of summary judgment criteria but its holding clearly conflicts with the oft-quoted *Poller vs. Columbia Broadcasting Systems, Inc.*, 368 U.S. 464, 473 (1962), where this Court said, that:

> "Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even-handed justice.'"

Similarly, see also, the Third Circuit in the "tying" magazine case of *Bragen vs. Hudson C ..y News Company*, 278 F. 2d 615, 617 (3rd Cir. 1960), listing certain well-settled principles against summary judgment and citing the Fifth, Ninth and Tenth Circuits, while reversing summary judgment for defendant.

This Court in *Radovich vs. National Football League*, 352 U.S. 445, 453 (1957), said:

> "Petitioner's claim need only be 'tested under the Sherman Act's general prohibition on unreasonable restraints of trade.'"

The opinion by Mr. Justice Clark went on to conclude, 352 U.S. at 454:

> "We think that Radovich is entitled to an opportunity to prove his charges."

The Eighth Circuit itself has so admonished in the leading case of *Montgomery Ward & Co. vs. Langer*, 168 F. 2d 182,

188 (8th Cir. 1948), reversing dismissal of a libel complaint:

> "This Court has said that no matter how improbable it is that a plaintiff can prove the claim stated in his complaint, he is entitled to an opportunity to make the attempt."

B. Relevant Market Criteria

There should be no confusion today on the test for relevant market because the movie "block booking" cases of some ten or so years ago applied the test of interchangeability. The leading case of this Court is *United States vs. Loew's, Inc.*, 371 U.S. 38 (1962). There, each copyrighted film block booked was found to be in itself a unique product and not fungible and therefore the monopolistic position resulted in sufficient economic power to impose an appreciable restraint on free competition in the tied product. The court said that the stations that were *forced to take unwanted films were denied access to other films.* Then the opinion stated:

> "By the same token, the distinctiveness of the copyrighted tied product is not inconsistent with the fact of competition, in the form of other programming material and other films, which is suppressed by the tying arrangements." 371 U.S. 38, at 49. (Emphasis added.)

Similarly herein, other sports-entertainment is suppressed.

Judge Dooling in *Shayne vs. Madison Square Garden* (sports ticket tying case), 1974 Trade Cases para. 74,920, at 96,124, (E.D.N.Y. 1/9/73) cited the *Loew's* decision and said:

> "Common to all of the cases is the visualization of competing suppliers of the tied product or *something that adequately substitutes for it.*" (Emphasis added.)

Judge Dooling *supra*, at 96,125, although denying class action status because of the strength of the plaintiff, used the words

"interchangeable" and "substantial products," and he used "substitutional or alternative products, and suppliers)" in relation to the season ticket subscriber. The relative market obviously should include at least the professional sports events in Minnesota.

Chief Judge Kaufman cites and quotes, *supra*, at 96,491, this Court in *Brown Shoe Co. vs. United States*, 370 U.S. 294, 325 (1962) delineating the outer boundaries of a product market by the test of " '*reasonable interchangeability of use or the cross elasticity of demand between the product itself and* substitutes for it'." (Emphasis added.) Under such a test it is hard to fathom why the argument and Record established by Laing did not survive summary judgment before the Eighth Circuit.

The Eighth Circuit itself in the Section 2 patent monopoly case of *Acme Precision Products, Inc. vs. American Alloys Corp.*, 1973-2 Trade Cases para. 74,711 (8th Cir. 9/25/73) at 95,146, cited this Court in *U.S. vs. Grinnell Corp.*, 384 U.S. 563 (1966); *International Boxing Club vs. U.S.*, 358 U.S. 242 (1959); and especially *U.S. vs. E. I. DuPont de Nemours & Co.*, 351 U.S. 377 (1956), as holding relevant market to be essentially a fact question of *reasonable interchangeability for consumers* but failed to expressly apply it to *Laing*.

IV

THIS IS A MATTER OF SPECIAL PUBLIC IMPORTANCE

A newspaper story published in the St. Paul Pioneer Press at the time Laing filed his suit is reprinted in Appendix E hereto. It quoted the Minnesota Attorney General in agreement with Laing's suit and he said that generally he does not comment on a pending suit.

The Massachusetts Attorney General issued a press release on the ticket policy change agreed to by the Patriots. It is reprinted in the Appendix F hereto. As noted elsewhere herein, the Massachusetts legislature has now taken up the cudgel against professional sports tying tickets together between exhibition and regular season games.

Remand 28 U.S.C., Section 2106

Alternatively, Laing asks this Court to remand this to have the lower Courts expressly address the relevant market issue on the particular factual Record herein and to also address the effect of the 4 per game single ticket limit on the fact question of coercion. At oral argument, the District Court queried the Viking's counsel as to the Record having some indication that individual game tickets were limited to four but carried it no further. That is as far as either court went in expressly considering the four ticket limit question.

CONCLUSION

Professional football and other such sports (except baseball) are today not exempt from the antitrust laws, *Radovich vs. N.F.L.*, 352 U.S. 445, 452 (1957), and *International Boxing Club vs. United States*, 358 U.S. 242 (1959), yet that does seem to be the practical result of the summary dispositions by the lower courts to date of the football ticket claims. The sports fan should not be denied his day in Court. To him it is important. Chief Judge Kaufman said that *Coniglio* could only successfully traverse three quarters of the field, *supra*, at 96,490. However, it is clear that *Laing* could successfully

traverse the entire field to cross the goal line and reverse this summary judgment because that opinion speaks in terms of "general entertainment market", "movies," "live theater", "music programs", "plays", "musicals", "zoo", and "opera", *supra*, at 96, 491, while in contradistiction, *Laing* rifled in and presented hard core facts and argument on competing professional sports teams directly bearing on the factual question of relevant market.

In the furtherance of justice for the reasons shown herein, this Petition for Writ of Certiorari should be granted by this Court.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 73-1625

NORBERT A. LAING, an individual, on behalf of himself and all other persons, associations, firms and corporations similarly situated,

Appellant,

vs.

MINNESOTA VIKINGS FOOTBALL CLUB, INC., John Doe, Richard Roe, et al., A.B.C., Inc., et al.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Submitted: January 17, 1974
Filed: February 11, 1974

Before MEHAFFY, Chief Judge, LAY and ROSS, Circuit Judges.

PER CURIAM.

The judgment below is affirmed on the basis of the district court's opinion, and on the ground that there is no anti-competitive effect. *See Grossman Development Co. v. Detroit Lions, Inc.*, Civil Action No. 37652 (E.D. Mich. Nov. 16, 1973).

LAY, Circuit Judge, concurring.

I concur in the affirmance of the district court's judgment on the ground that plaintiff has demonstrated no anti-competitive effect flowing from the Minnesota Vikings Football Club's requirement that a season ticket holder purchase tickets to the exhibition games along with regular season games. The basis of the district court's grant of summary judgment, i.e., that there existed no "coercive effect" since there were available some regular tickets (approximately 2,500 to 4,000) for purchase by the general public for each game gives me concern. It is difficult for me to say as a matter of law that no coercion exists. Assuming the other elements of a "tie-in" could be proved, I would think whether coercion exists is a question of fact to be evaluated in light of all of the attendant circumstances.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
September Term, 1973

No. 73-1625.

NORBERT A. LAING, etc.,

Appellant,

vs.

MINNESOTA VIKINGS FOOTBALL CLUB, INC.,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

The Court having considered petition for rehearing en banc filed by counsel for appellant and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

April 3, 1974

APPENDIX C

(Caption)

ORDER

Defendant has filed a motion for Summary Judgment.

The Court has considered the arguments, briefs of counsel, and affidavits submitted by the parties for the Court's consideration of this motion.

On all the files and proceedings herein,

IT IS ORDERED:

That defendant's motion for Summary Judgment be granted.

July 6, 1973.

EARL R. LARSON
United States District Judge

Memorandum attached.

MEMORANDUM

Defendant Minnesota Vikings Football Club, Inc. (hereinafter "Vikings"), moves the Court for summary judgment of this antitrust action. Vikings is a corporation engaged in the business of professional football. Plaintiff is the purchaser of season tickets to Vikings games and he seeks to maintain this action on behalf of a class consisting of all persons who purchased Vikings season tickets in the years 1968, 1969, 1970 and 1971.

Plaintiff's allegation is that defendant is guilty of violation of Section 3 of the Clayton Act and Section 1 of the Sherman Act because defendant illegally "tied" the purchase of tickets to preseason home games to the purchase of tickets to regular season home games. It is alleged in the complaint that "Purchasers of 'season tickets' to regular season 'home' games were required to purchase pre-season tickets regardless of whether

or not said purchasers wanted the tickets to said pre-season 'home' games," and that "defendant refused to sell so-called 'season tickets' to regular-season 'home' games unless tickets to all pre-season 'home' games are [sic] purchased therewith."

From the record now before the Court it is clear that, as a practical matter, defendant has made available individual game tickets. As stated in the August 28, 1972, affidavit of James Finks, Vice President and General Manager of defendant:

> "In 1968 there were approximately 13,000 tickets available for purchase for each regular season home game to individuals who wished to buy regular season game tickets on an individual game basis; in 1969 there were 9,500 tickets available for purchase on that basis; in 1970 there were 5,100 tickets available for purchase on that basis; and in 1971 there were from 2,500 to 4,100 tickets available for purchase on that basis."

Plaintiff does not dispute these figures. [See, Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment at 8.]

The Court is of the view that no claim of "tying" violative of the antitrust laws can stand in light of these facts. While individual game tickets remain available, it cannot be said that defendant has structured the marketing of its tickets in such a way that consumers are compelled to buy something they don't want in order to obtain something they do want.

This Court's conclusion that defendant's merchandising of tickets does not present the requisite compulsion on consumers to support an antitrust "tying" claim comports with the opinion of Judge Garrity in *Pfieffer v. New England Patriots, et al*, No. 71-2501-G (D. Mass. 1972). *Cf., Driskill v. Dallas Cowboys Football Club, Inc.*, No. CA-3-6313-D (N.D. Texas, 1973).

Having concluded that the critical element of consumer compulsion is here lacking, the Court must grant defendant's summary judgment motion and need not consider the "single product" issue nor the "anti-competitive effect" issue argued by the parties on this motion.

EARL R. LARSON

APPENDIX D

Section 1, Sherman Act
July 2, 1890, Chap. 647, Sec. 1, 26 Stat. 209; 15 U.S. Code, Sec. 1.

Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *.

Section 3, Clayton Act
October 15, 1914, Chap. 323, Sec. 3, 38
Stat. 731; 15 U.S. Code, Sec. 14.

Section 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such

lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Section 4, Clayton Act

October 15, 1914, Chap. 323, Sec. 4, 38 Stat. 731; 15 U.S. Code, Sec. 14.

Section 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Section 16, Clayton Act

October 15, 1914, Chap. 323, Sec. 16, 38 Stat. 737; 15 U.S. Code, Sec. 26.

Section 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided,* That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions

of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Title 28 U.S. Code, Sec. 2106

Sec. 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

APPENDIX E

SPANNAUS SAYS LAING HAS CASE

Minnesota Attorney General Warren Spannaus said Thursday he believes the man who filed a suit against the Minnesota Vikings has a strong case in protesting the inclusion of pre season games in the season ticket book.

Norbert A. Laing, Bloomington, has filed a suit in U.S. District Court against the Vikings claiming the National Football League team's policy violates federal antitrust laws.

"We investigated the situation here," said Spannaus, "and were considering antitrust. But we figured other antitrust cases had priorities because they affected more people.

"Generally speaking, I don't like to comment on a suit pending in court. But here I think Laing and his attorney have a strong case."

The suit asks the court to restrain the Vikings from including preseason games in the sale of season tickets, declare the

practice illegal and to order the club to reimburse Laing and other season ticket holders cost of preseason games since 1968.

Jim Finks, Viking general manager, said the team will defend its position in court.

[St. Paul Pioneer Press, October 1, 1971, page 21]

APPENDIX F

Robert H. Quinn
Attorney General

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FOR RELEASE:
MONDAY, DECEMBER 20, 1971

Atty. Gen. Robert H. Quinn and Bill Sullivan, President of the New England Patriots Football Club, today announced that a solution had been reached in selling Patriots season ticket packages.

The decision culminated many conferences between the Atty. Gen. and members of his staff and Atty. William F. Finucane, General Counsel for the Patriots, and Bill Sullivan.

The Atty. Gen. had previously expressed several questions about the 1971 season ticket program. As a result of the presentation of the Patriots, however, he stated that he would take no further action with respect to the 1971 program. He added that the format of the 1972 season ticket program resolved all the questions he had.

The plan which met with the approval of the Atty. Gen.'s staff and the Patriots is as follows:

1. The Patriots will send out to renewing season ticket holders a letter accompanied by an invoice for a ten-game package and a form which will provide the purchaser with the opportunity to release the tickets for the three pre-season games if he does not wish to purchase same.

2. If such tickets are released they will then be made available in a three-game package on a first-come, first-served basis, but the original holder of the tickets will forfeit his right to renewal of same in future years, as the location for the three-game package will then become the property of the new buyer of same.

3. New season tickets holders can buy either the ten-game or the seven-game or the three-game package. In the case of the ten-game package and the seven-game regular season package tickets will be allocated on a first-come, first-served basis with no preference being extended to those who buy ten as against those who purchase only seven.

The three-game pre-season package will feature longstanding National Football League teams—the Chicago Bears, the Detroit Lions and the New York Giants.

Speaking on behalf of the Patriots, Sullivan expressed appreciation to the Atty. Gen. and all the members of his staff.